

RESOLUTION

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION (DOT), FOR THE TRANSFER OF FUNDS RELATED TO THE EWA HIGHWAY IMPACT FEES

WHEREAS, Chapter 33A, Revised Ordinances of Honolulu (ROH) related to the assessment and collection of Ewa Highway Impact Fees, took effect in November 2002; and

WHEREAS, the City and DOT desire the expenditure of the impact fees to expeditiously implement and construct highway improvements in Ewa (as described in Chapter 33A, Table 33A-1.2, ROH); and

WHEREAS, the subject Intergovernmental Agreement with the DOT, is necessary to establish the transfer of impact fees collected by the City in a timely manner; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu, that the Council consent to and approve the proposed agreement attached hereto as Exhibit "1" and by reference made a part of this resolution; and

BE IT FURTHER RESOLVED that the Mayor or his assigned representative be hereby authorized to:

1. Execute an agreement with the State of Hawaii in substantially the same form as the proposed agreement attached hereto as Exhibit "1"; and
2. Execute any incidental or related agreements and documents in furtherance of the above agreement so long as such agreements and documents do not incur additional obligations on the part of the City; and

BE IT FINALLY RESOLVED that the Clerk be and is directed to transmit copies of this resolution to Mufi Hannemann, Mayor of the City and County of Honolulu; Mr. Melvin N. Kaku, Director of the Department of Transportation Services; Mr. Henry Eng, Director of the Department of Planning and Permitting; the DOT; and to such other agencies as may be necessary.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 07-005

RESOLUTION

INTRODUCED BY:

Burt Marshall (Br.)

DATE OF INTRODUCTION:

JAN 03 2007

Honolulu, Hawaii

Councilmembers

INTERGOVERNMENTAL AGREEMENT FOR EXPENDITURE OF IMPACT FEES FOR TRAFFIC AND ROADWAY IMPROVEMENTS IN EWA

THIS AGREEMENT has been executed _____, 2006, by authorized officers of the DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "DOT") and the CITY AND COUNTY OF HONOLULU (hereinafter referred to as "CITY"). The DOT is a public agency of the State of Hawaii whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813. The CITY is a municipal corporation whose address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813.

RECITALS

WHEREAS, Chapter 33A, Revised Ordinances of Honolulu (ROH), took effect in November 2002; and

WHEREAS, under Chapter 33A, ROH, the CITY assesses and collects Ewa highway master plan impact fees to help pay for the capital costs of planned regional highway improvements; and

WHEREAS, the DOT and the CITY desire the expenditure of Ewa highway master plan impact fees to construct state highway improvements listed in Chapter 33A, Table 33A-1.2, ROH; and

WHEREAS, under Part VIII of Chapter 264, Hawaii Revised Statutes, the DOT is authorized to receive and deposit CITY impact fee revenues to the highway development special fund; and

WHEREAS, the DOT and the CITY agree that Ewa highway master plan impact fees should be calculated so that Ewa developers contribute their "fair share" of the cost of planned regional highway improvements; and

WHEREAS, plans for regional highway improvements, Ewa highway master plan impact fees, and Chapter 33A, ROH, will need to be periodically updated to accommodate a longer time frame and changing conditions,

NOW THEREFORE, the CITY and the DOT agree as follows:

1. CITY's Share of Impact Fee Collection. Until this Agreement is amended, the CITY shall retain: administrative collection fees set under Chapter 33A, ROH, which shall not exceed two (2) percent of the impact fees collected; and the initial collected fees of \$2,800,000 (two million eight hundred thousand dollars).
2. DOT's Share of Impact Fee Collection. Every three months the CITY shall transfer to the DOT all impact fee collections in excess of the CITY's share.
3. Transfer of Monies. Checks for transfer of Ewa highway master plan impact fees to DOT shall be made payable to "State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813". The notation "Ewa Impact Fee Revenues" shall appear on each check. Each check shall be accompanied by a transmittal letter which indicates the amount of the check and states that the check represents partial payment of revenues generated under Chapter 33A, ROH. Checks and transmittal letters shall be delivered/remitted to:

State of Hawaii
Department of Transportation
Highways Division
Fiscal Office
Attention: Chief Accountant
869 Punchbowl Street, Room 201
Honolulu, Hawaii 96813

4. Deposit and Expenditure of Monies. Revenues transferred to DOT shall be deposited into the DOT's highway development special fund.
5. Revenue and Expenditure Reports. By August 31st of each year, the CITY shall provide the DOT with a summary showing total annual CITY impact fee collections, and dates and amounts of CITY transfers to the DOT for the annual period ending June 30th, in a mutually agreed format. The first report the CITY provides the DOT shall cover the period beginning with the time that the first impact fee collection was received by the CITY through June 30th of the year the first report is made. In return, by October 31st of each year, the DOT shall provide the CITY with a summary showing dates and amounts of deposits, interest earned, funds encumbered, and expenditures from the highway development special fund for the preceding State fiscal year ending June 30th.
6. Indemnity. The CITY shall indemnify, defend, and hold harmless the DOT, its officers, employees, and agents, from and against any claims, demands, actions, suits, causes of action, judgments, losses, liabilities, damages, costs, and expenses, arising from or related to the CITY's actions or omissions under this Agreement, including, without limitation, the assessment, collection, and payment to the DOT of any monies or impact fees assessed, collected, or paid pursuant to Chapter 33A, ROH.
7. Other Agreements. This Agreement supersedes all other oral or written letters, agreements, or understandings.
8. Amendment of Agreement. Amendments of this Agreement require the written consent of both parties.
9. Assignability and Waiver. Neither party may assign or waive any rights or obligations under this Agreement without prior written consent from the other party.
10. Interpretation and Enforcement. This Agreement shall be governed by and interpreted in accordance with State law, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement. The DOT and the CITY shall have such rights and remedies as may be available at law or in equity.
11. Termination of Agreement. This Agreement shall terminate after (i) the CITY is no longer authorized to assess, collect, and pay over to the DOT any Ewa highway master plan impact fees and (ii) the CITY demonstrates in writing, to the DOT's satisfaction, that the DOT's share of all Ewa highway master plan impact fees assessed and collected during the period of time the CITY was in fact authorized to assess and collect such impact fees, have been paid in full to the DOT. Provisions of this Agreement which pertain to the assessment, collection, and payment of the Ewa highway master plan impact fees shall survive the termination of this Agreement.
12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original which binds both parties, notwithstanding whether both parties

sign the same counterparts. Neither party to this Agreement shall be deemed to be the drafter of this Agreement.

IN WITNESS THEREOF, by signature of their authorized officers, the DOT and CITY have executed this Agreement to take effect as of the date first above written.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By _____
Director of Transportation

APPROVED AS TO FORM:

Deputy Attorney General

APPROVAL RECOMMENDED:

CITY AND COUNTY OF HONOLULU
APPROVAL RECOMMENDED:


Director, Department of
Planning and Permitting

Director, Department of Budget &
Fiscal Services

DEPARTMENT OF
TRANSPORTATION SERVICES

By _____
Director of Transportation Services

APPROVED AS TO FORM:



Deputy Corporation Counsel